BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHESTER R. RIDGE JR.	)	
Claimant	)	
	)	
VS.	)	
	)	
RILEYS BUILDER SUPPLY INC.	)	
Respondent	)	Docket No. 1,008,063
	)	
AND	)	
	)	
FEDERATED MUTUAL INS. CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier request review of the August 7, 2003 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) found the claimant suffered accidental injury arising out of and in the course of his employment with respondent on April 30, 2002. Consequently, the ALJ authorized medical treatment with Dr. Robert A. Rawcliffe.

The respondent requests review and argues claimant suffered an intervening accident. Respondent does not dispute claimant suffered a work-related accident on April 30, 2002, but notes claimant was released to return to work after that injury and worked seven months until he suffered a non occupational injury lifting a television set. Consequently, respondent argues the intervening accident is the cause of claimant's current complaints.

Claimant argues the incident lifting the television set was merely a temporary exacerbation of his work-related back injury. Accordingly, claimant requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

It is undisputed that on April 30, 2002, claimant suffered a work-related injury to his low back while lifting bags of cement. Claimant was sent to the Wesley Medical Center emergency room. Claimant was diagnosed with a lumbar strain, prescribed medication and released with temporary restrictions. On May 13, 2002, claimant returned to the emergency room and was provided additional medication for his back pain. Claimant returned to his work without restriction.

On approximately December 13, 2002, claimant had picked up a 35-inch television set at a pawn shop and as he attempted to unload the television set he injured his back. As a result of that incident the claimant had called respondent and left a message why he couldn't come to work. The claimant identified his voice on the message:

> Q. I want you to listen to this tape that I have here, sir, and ask you if this is your voice and the message you left.
>
> Mike, this is Chester calling. Man, my back was blown out Thursday and Friday with nobody at home so I couldn't call or nothing like that. I laid down and went and pick up my TV from the pawn shop Wednesday. It is a 35 - inch screen TV. It blew my back and gave me a terrible headache, terrible migraine. Thursday.
>
> A. Yeah, that's me.[1]

Claimant then sought treatment at the emergency room on December 20, 2002 with complaints of low back pain radiating into his right leg and foot.

Before the incident lifting the television the claimant had returned to his work without restriction. And he neither asked nor received additional medical treatment for his back until, after lifting the television set, he again returned to the emergency room on December 20, 2002.

Respondent considered the incident lifting the television as an intervening accident and would not pay for the claimant's visit to the emergency room on December 20, 2002. After a February 13, 2003 preliminary hearing held on claimant's request for medical treatment, the ALJ ordered Dr. Philip R. Mills to perform an independent medical examination and issue a causation opinion as well as treatment recommendations.

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[1] P.H. Trans. at 20-21.

Neither the administrative file nor the parties' briefs offer an explanation but it appears that the independent medical examination was performed on June 17, 2003, by Dr. Rawcliffe instead of Dr. Mills. Dr. Rawcliffe's report refers to the sequence of injuries suffered by claimant but does not definitively offer a causation opinion. The report concluded claimant had degenerative disk disease which had been present for many years and could have been temporarily aggravated by the work-related injury claimant suffered on April 30, 2002. The doctor recommended an MRI study to verify or rule out either a protruded or herniated disk at the L4-5 level.

A finding with regard to a disputed issue of whether the employee suffered an accidental injury, and whether the injury arose out of and in the course of the employee's employment shall be considered jurisdictional, and subject to review by the board.[2] Whether claimant suffered a subsequent intervening injury gives rise to an issue of whether claimant's current condition arose out of and in the course of his prior employment with respondent. This issue is jurisdictional and may be reviewed by the Board on an appeal from a preliminary hearing order.

When the primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.[3] It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.[4]

The independent medical examiner indicated the work-related injury could have temporarily aggravated claimant's preexisting degenerative disk disease. The claimant received treatment after his work-related accident and then returned to work for approximately seven months without seeking additional treatment. Claimant then injured his back lifting a television set. After that incident he sought emergency room treatment, apparently needs additional medical treatment and according to the medical records has not returned to work. All of which are indicative of a worsening of his low back condition after the incident lifting the television.

Based upon the record compiled to date, the Board concludes that claimant's current symptoms and need for medical treatment are attributable to the intervening injury he suffered lifting a television set. Where a condition is shown to have been caused or

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[2] K.S.A. 44-534a(a)(2).

[3] *Jackson v. Stevens Well Service*, 208 Kan. 637, 643, 493 P.2d 264 (1972).

[4] *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

aggravated by a subsequent intervening injury, respondent's liability for providing medical treatment ends.[5] Therefore, the ALJ's Order should be reversed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.[6]

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge John D. Clark dated August 7, 2003, is reversed.

IT IS SO ORDERED.

Dated this _____ day of October 2003.

_____
BOARD MEMBER

c: Russell B. Cranmer, Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[5] *Stockman v. Goodyear Tire & Rubber Co*., 211 Kan. 260, 505 P. 2d 697 (1973).

[6] K.S.A. 44-534a(a)(2).